FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 449/ 2005
(Ramesh Gopala Banpurkar Vs. Ganpat Doma Banpurkar & anr.)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. N.A. Vyawahare, Adv. for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 24th September, 2007.

Heard Mr. Vyawahare for the appellant.

The appellant is the original plaintiff. A suit was filed by the plaintiff for possession of the suit property. It was the case of the plaintiff that he was the owner of the suit property which was purchased by an oral sale with delivery of possession for the consideration of Rs. 85/- in the month of May, 1967, by the mother of plaintiff in the name of plaintiff, from Madhukar Banpurkar. According to the plaintiff, since the defendant no.1 is his real paternal uncle, he was permitted to use the suit property as a licensee thereof. Since the defendant no.1 did not vacate the suit premises in spite of a notice from the plaintiff, the plaintiff instituted the present suit.

The defendants denied the claim of the plaintiff and pleaded that the defendant no.1 and his

brothers Gopal and Ramdas, jointly, purchased the suit property by an agreement dated 24/4/1968 and the suit house was allotted to the defendant no.1 in the partition dated 15/10/1969. It was denied that the suit property was orally purchased by the plaintiff's mother from Madhukar Banpurkar. According to the defendants, since the defendants paid the entire consideration to Madhukar Banpurkar, he executed the document of sale on 17/3/1973 in favour of the defendants.

On the aforesaid pleadings of the parties, the trial Court framed the issues and after considering the evidence tendered by the parties on record, held that the plaintiff was not entitled to a decree of possession. The Court held that the plaintiff had failed to prove that his mother had orally purchased the suit property for an amount of Rs. 85/- from Madhukar Banpurkar. The documentary evidence tendered by the plaintiff on record was weighed by the trial Court with the other evidence which was tendered by the parties on record to hold that the plaintiff had not succeeded in proving that his mother had purchased the suit property from Madhukar. Madhukar was also examined on behalf of the defendants and Madhukar clearly deposed in his evidence that he had not sold the suit property to plaintiff's mother, at any point of time. The first appellate Court, in an

appeal filed by the plaintiff, confirmed the findings recorded by the trial Court. Both the Courts concurrently held that the plaintiff had failed to prove his ownership over the suit property and, therefore, was not entitled to seek possession of the suit property from the defendants. The Courts further held that there was no question of plaintiff's permitting the defendants to use the suit property as a licensee as the plaintiff failed to prove his title to the suit property.

Findings recorded by both the Court are pure findings of facts which do not give rise to any substantial question of law in the second appeal. Second appeal is, therefore, dismissed with no order as to costs.

JUDGE

RMP